

### **REMARKS**

As provided above, in response to the instant restriction requirement, Applicants have provisionally elected, with traverse, restricted Group I (corresponding to claims 1-19 and 59-74). Following this election, claims 1-19 and 59-74 are pending and under consideration, while claims 20-58 and 75-108 are pending but withdrawn from consideration.

Applicants have further been required, at pages 4-5 of the Restriction Requirement, to elect “a single species from (species groups) a, b and c,” in the event that Group I is elected.

In particular, with reference to species group “a”, the Restriction Requirement states that “the application contains claims directed to...patentably distinct species of...neoplastic cells, drug sensitive cell line(s), or the tissue for neoplastic cells from claim 6, 7, 8, 9, 16, 17, 64, 65, 71 or 72.” Accordingly, Applicants further provisionally elect, with traverse, the species “a (neoplastic) breast epithelial cell” or “a breast cancer cell” from the “neoplastic cells” of claims 6, 9, 16, 17, 71 and 72. In addition, Applicants further request, as appropriate, concurrent consideration of the breast epithelial cell line species “MCF-7” and “MDA” of the “neoplastic cell” of claim 7, and the related “carcinoma cell” “neoplastic cell” of claim 8. Applicants still further request, as appropriate, concurrent consideration of the related “breast” tissue test and control cells species of claims 64 and 65. As clarified by the Examiner in a telephonic interview of June 13, 2005, each of these elections relates to a method of detecting a type of breast cancer, and so are properly examined together in a single species election. Applicants gratefully acknowledge the helpful assistance of the Examiner in this regard.

Furthermore, with reference to species group “b”, the Restriction Requirement states that “the application contains claims directed to...patentably distinct species of...vimentin binding agent(s) (or) ligand(s) from claim(s) 12, 13, 23, 34, 35, 68, 69, 77, 84 (and) 85”. Applicants have provisionally elected with traverse the claims of restricted group I (1-19, 59-74), and, accordingly, only claims 12, 13, 68 and 69 have been elected and apply to the instant requirement for election of species. Accordingly, Applicants provisionally elect with traverse the species “modified LDL” as the “vimentin binding agent” of claims 12 and 68, as well as the species “natural ligands” as the “vimentin binding agent” of claims 13 and 69.

Still further, the Office Action states, with reference to species group “c”, that “the application contains claims directed to...patentably distinct species of...detectable label(s) from

claim(s) 14 (and) 70. In response, Applicants provisionally elect with traverse the species “fluorophores” from the “detectable labels” of claims 14 and 70.

As relates to each of the above-made species elections, Applicants respectfully note that they will be entitled to further examination of the remaining species of the genus if the elected species is found to be patentable as provided under 37 C.F.R. §1.141. Applicants’ substantive arguments in support of their traversal of the restriction requirement are presented below.

As a preliminary matter, Applicants respectfully note that, for a restriction requirement to be proper, it must establish that both:

- (A) The inventions are independent or distinct; and
- (B) There must be a serious burden on the examiner if restriction is required (see MPEP §803).

Applicants respectfully assert that the restriction requirement presented has not established both of these criteria. In particular, Applicants respectfully note that there would be no serious burden on the Examiner to search the claims of restricted group II (*i.e.*, claims 20-24 and 75-92) along with the claims of elected group I, because restricted group II relates to kits comprising a probe for the detection of vimentin, or a cell surface targeting vimentin-binding agent, and these same vimentin binding elements are a part of the diagnostic methods of elected group I. Accordingly, there would be no burden in extending the search of restricted group I to included the claims of restricted group II. Reconsideration and rejoinder of at least restricted groups I and II is therefore respectfully requested.

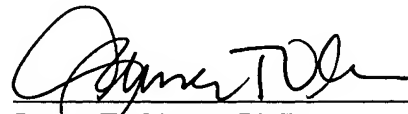
### CONCLUSION

In summary, Applicants have provisionally elected with traverse the claims of Group I, and have further specified the corresponding species elections required by the Restriction Requirement issued on March 8, 2005. Applicants have further herein respectfully urged reconsideration and withdrawal of the restriction requirement so that the above-cited claims, particularly those of restricted Group II, may be rejoined and considered together with the claims of elected Group I. Finally, favorable consideration of the pending claims of record is also respectfully requested at this time.

Appln. No. 10/736889  
Response to Restriction Requirement dated March 8, 2005  
Attorney Docket No.: 112418.147 US2 (AUR-013US)

No fees are believed to be due at this time. However, if such a fee is due or a credit is owed, please make them to our Deposit Account No. 08-0219. If there are any questions, please contact the undersigned at the telephone number indicated below.

Respectfully submitted,



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